

Promenade, Suite 3100
1230 Peachtree Street, N.E.
Atlanta, Georgia 30309-3592
Main: 404 815-3500
Fax: 404 815-3509
www.sgrlaw.com

SMITH, GAMBRELL & RUSSELL, LLP
Attorneys at Law

Andrew M. Thompson
Direct Dial: 404-815-3701
Direct Facsimile: 404-685-7001
Email: athompson@sgrlaw.com

May 28, 2014

**BY CERTIFIED MAIL
ARTICLE NO. 7196 9008 9115 5215 3468
RETURN RECEIPT REQUESTED**

Managing Agent
American Sealcoat Manufacturing LLC
525 Frederick Court SW
Atlanta, GA 30336

Re: **Notice of Intent to Sue Under Section 505
of the Clean Water Act, 33 U.S.C. § 1365**

Dear Madam or Sir:

This firm represents Chattahoochee Riverkeeper, Inc. ("CRK") in matters relating to the facility operated by American Sealcoat Manufacturing LLC, located at 525 Frederick Court SW, Atlanta, GA 30336 (hereafter "the American Sealcoat Site"). The purpose of this letter is to inform you that CRK intends to bring a citizen suit 60 days from the date of this letter under section 505 of the federal Clean Water Act ("CWA") and the Georgia Water Quality Control Act ("GWQCA") against American Sealcoat Manufacturing LLC (hereinafter "American Sealcoat") for American Sealcoat's discharge of pollutants without a permit and the other violations described below. The lawsuit will seek injunctive relief, civil penalties, attorneys' fees and expenses of litigation, for violations of the CWA and the GWQCA.

As you may be aware, CRK is a nonprofit corporation with over 7,000 members and with its primary office in Atlanta, Georgia. CRK's mission is to advocate and secure the protection and stewardship of the Chattahoochee River and its tributaries and watershed, in order to restore and conserve their ecological health for the people, fish and wildlife that depend on the river system. The American Sealcoat Site discharges to an unnamed tributary to the Chattahoochee River. CRK members recreate and fish in and on the Chattahoochee River downstream of the discharge of American Sealcoat. The quality of the Chattahoochee River and its tributaries directly affects the recreational, aesthetic and environmental interests of CRK's members.

The violations in question arise out of American Sealcoat's unlawful and unpermitted discharge of pollutants and pollutant-laden storm water into the Chattahoochee River and its unnamed tributary. The Chattahoochee River and its unnamed tributary are waters of the State



of Georgia for purposes of the GWQCA, and waters of the United States for purposes of the CWA.

The following violations of the CWA have occurred and continue to occur as a result of the activities of American Sealcoat.

Section 1311 of the CWA states “[e]xcept as in compliance with this section and sections 1312, 1316, 1317, 1328, 1342, and 1344 of this title, the discharge of any pollutant by any person shall be unlawful.” 33 U.S.C. § 1311(a). Section 1342 of the CWA makes it unlawful for any person to discharge from a point source without a National Pollutant Discharge Elimination System (“NPDES”) permit. On August 1, 2006, the General NPDES Permit for Discharges of Storm Water from Industrial Activities, GAR000000 (the “General Permit”), became effective in Georgia and a revised version was reissued as GAR050000 and became effective on June 1, 2012. The General Permit requires owners and operators of industrial facilities such as the American Sealcoat Site to file a notice of intent under and comply with the provisions of the General Permit.

American Sealcoat has not filed a notice of intent under the General Permit to discharge storm water from industrial activities at the American Sealcoat Site and American Sealcoat has not obtained an individual NPDES permit for such point source discharges. Therefore, your continuing discharge of pollutants in storm water from industrial activities at the American Sealcoat Site violates 33 U.S.C. § 1311. The discharges are ongoing and unlawful under the CWA, 33 U.S.C. § 1311, the GWQCA, O.C.G.A. § 12-5-21 et seq, and federal and state regulations.

Moreover, on May 27, 2014, representatives of CRK witnessed American Sealcoat discharging a black oily liquid, presumably associated with American Sealcoat’s manufacturing activities, from the Site through a discharge pipe to an unnamed tributary and into the Chattahoochee River. American Sealcoat has not obtained an individual NPDES permit for a point source discharge. Therefore, your continuing discharge of such pollutants at the American Sealcoat Site violates 33 U.S.C. § 1311. The discharges are ongoing and unlawful under the CWA, 33 U.S.C. § 1311, the GWQCA, O.C.G.A. § 12-5-21 et seq, and federal and state regulations.

In addition, American Sealcoat has failed to comply with numerous requirements of the General Permit in regard to the industrial activities at the American Sealcoat Site. American Sealcoat’s continuing and ongoing violations of the General Permit include but are not limited to the following: (1) the failure to prepare a Storm Water Pollution Prevention Plan (“SWPPP”) in accordance with Part 5 of the General Permit; (2) the failure to conduct storm water sampling and monitoring in accordance with Part 6 of the General Permit; (3) the failure to provide

monitoring reports and additional reporting to EPD in accordance with Part 7 of the General Permit; (4) the failure to conduct inspections of the Site in accordance with Part 4 of the General Permit; (5) the failure to retain records in accordance with Part 7.5 of the General Permit; (6) the failure to document and report exceedances and violations of the General Permit to EPD in accordance with Parts 6.3.1 and 7.3; (7) the failure to properly design, install, and maintain adequate control measures, including best management practices ("BMPs") as required by Part 2.1 of the General Permit; and (8) the failure to conduct appropriate corrective actions as required by Part 3 of the General Permit. Such violations are ongoing and unlawful under the CWA, 33 U.S.C. § 1311, the GWQCA, O.C.G.A. § 12-5-21 *et seq*, and federal and state regulations.

All of the above-described actions constitute continuing violations of sections 301 and 402 of the CWA and are therefore actionable under the citizen suit provision of the CWA. The violations have been observed to be ongoing as of the date of this letter. The discharges have had, and continue to have, a direct and adverse effect on the Chattahoochee River and its unnamed tributary, and have interfered with the use and enjoyment of such waters by CRK's members.

Please be advised that, under section 309(d) of the CWA, 33 U.S.C. § 1319(d), each of the above-described violations subjects American Sealcoat to a penalty of up to **\$37,500 per day for each day of violation**. 40 C.F.R. § 19.4. In addition to civil penalties, CRK will seek injunctive relief to prevent further violations, and under section 505(d) of the CWA, 33 U.S.C. § 1365(d), a plaintiff prevailing in a citizen suit is able to recover its attorney's fees and expenses of litigation.

In keeping with the requirements of federal regulations, you are hereby notified that the full address and phone number of CRK are as follows:

Sally Bethea
Chattahoochee Riverkeeper, Inc.
3 Puritan Mill
916 Joseph Lowery Blvd, N.W.
Atlanta, Georgia 30318
(404) 352-9828

CRK can be reached by calling the undersigned at 404-815-3701, or writing the undersigned at Promenade, Suite 3100, 1230 Peachtree Street, N.E., Atlanta, Georgia 30309.

As this is a matter of the utmost seriousness, we urge you to give it your immediate attention.

Sincerely yours,

SMITH, GAMBRELL & RUSSELL, LLP



Andrew M. Thompson

cc: Kim M. Fragale
Registered Agent for American Sealcoat Manufacturing LLC
525 Frederick Court SW
Atlanta, Georgia 30336
Certified Mail - Return Receipt Requested
Article No. 7196 9008 9115 5215 3536

Mr. Judson H. Turner, Director
Environmental Protection Division
Georgia Dept. of Natural Resources
2 Martin Luther King, Jr. Drive
East Tower, Suite 1166
Atlanta, Georgia 30334
Certified Mail - Return Receipt Requested
Article No. 7196 9008 9115 5215 3543

Gina McCarthy, Administrator
Environmental Protection Agency
401 M Street, SW
Washington, DC 20460
Certified Mail - Return Receipt Requested
Article No. 7196 9008 9115 5215 3550

Heather McTeer Toney, Regional Administrator
U.S. EPA - Region IV
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-3104
Certified Mail - Return Receipt Requested
Article No. 7196 9008 9115 5215 3567

American Sealcoat Manufacturing LLC
May 28, 2014
Page 5

James A. Capp, Branch Chief
Watershed Protection Branch
Georgia Environmental Protection Division
2 Martin Luther King, Jr. Drive S.W.
East Tower, Suite 1152
Atlanta, Georgia 30334
Certified Mail - Return Receipt Requested
Article No. 7196 9008 9115 5215 3574

American Sealcoat Manufacturing LLC

May 28, 2014

Page 6

bcc: Juliet Cohen (via email)
Jason Ulseth (via email)
Sally Bethea (via email)
Steve O'Day (via email)

SGR/12071473.1

7196 9008 9115 5215 3468



008 9115 5215 3468

CERTIFIED MAIL™

Delivery? (Extra Fee) ☐ Yes

Addressed to:

Agent
Seacoast Manufacturing LLC
Friedrick Court SW
Atlanta, GA 30336

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

X

D. Is delivery address different from item 1?
If YES, enter delivery address below:

☐ Agent

☐ Address

☐ Yes

☐ No

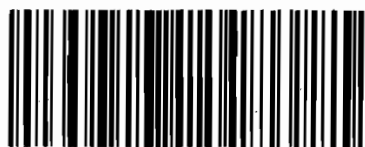
Matthew Brock

PS Form 3811, January 2005

Domestic Return Receipt

0210

2. Article Number



7196 9008 9115 5215 3567

3. Service Type CERTIFIED MAIL™

4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:

McTeer Toney, Regional Admin.
U.S. EPA - Region IV
Seawall Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-3104

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

C. Signature

X

D. Is delivery address different from item 1?
If YES, enter delivery address below:

T. Jackson

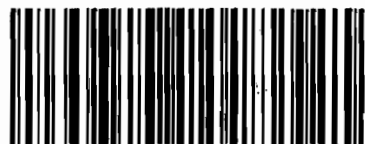
MPD57

PS Form 3811, January 2005

Domestic Return Receipt

AMT-100210

2. Article Number



7196 9008 9115 5215 3550

3. Service Type CERTIFIED MAIL™

4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:

Gina McCarthy, Administrator
Environmental Protection Agency
401 M Street, SW
Washington, DC 20460

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

C. Signature

X

D. Is delivery address different from item 1?
If YES, enter delivery address below:

Gina McCarthy

PS Form 3811, January 2005

Domestic Return Receipt

AMT-100210

7196 9008 9115 5215 3550

7196 9008 9115 5215 3574



7196 9008 9115 5215 3574

Service Type **CERTIFIED MAIL™**

Restricted Delivery? (Extra Fee) ☐ Yes

Article Addressed to:

A. Capp, Branch Chief
 Environmental Protection Branch
 EPA
 Martin Luther King, Jr. Drive SW
 Atlanta, Suite 1152
 Atlanta, GA 30334

PS Form 3811, January 2005

Domestic Return Receipt

AMT-100210

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

Arnetta Murphy

F. Date of Delivery

5/30/14

C. Signature

X Arnetta Murphy

☒ Agent
☐ Addressee

D. Is delivery address different from item 1?

If YES, enter delivery address below:

☐ Yes
☒ No

7196 9008 9115 5215 3543

Article Number



7196 9008 9115 5215 3543

Service Type **CERTIFIED MAIL™**

Restricted Delivery? (Extra Fee) ☐ Yes

Article Addressed to:

Randson H. Turner, Director
 Environmental Protection Division
 Georgia Dept. of Natural Resources
 Martin Luther King, Jr. Drive
 East Tower, Suite 1166
 Atlanta, GA 30334

PS Form 3811, January 2005

Domestic Return Receipt

AMT-100210

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

R. K. F.

B. Date of Delivery

MAY 30 2014

C. Signature

Environmental Protection Division

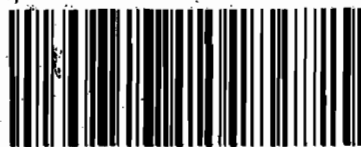
X

D. Is delivery address different from item 1?

If YES, enter delivery address below:

DIRECTOR'S OFFICE

2. Article Number



7196 9008 9115 5215 3536

3. Service Type **CERTIFIED MAIL™**

4. Restricted Delivery? (Extra Fee) ☐ Yes

1. Article Addressed to:

Mr. J. P. Pappale
 Regional Agent for American
 Sealcoat Manufacturing LLC
 525 Frederick Court SW
 Atlanta, GA 30336

PS Form 3811, January 2005

AMT-100210

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

J. P. Pappale

C. Signature

X J. P. Pappale

D. Is delivery address different from item 1?

If YES, enter delivery address below: